

EX PARTE OR LATE FILED
DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

ORIGINAL

J.G. HARRINGTON
DIRECT DIAL 202-776-2818
jharrington@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

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February 6, 2002

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 - 12th Street, SW, Room 8B201
Washington, DC 20554

Re: Performance Measurements and Standards for Unbundled Network
Elements and Interconnection
CC Docket No. 01-318
Notice of Written Ex Parte Communication

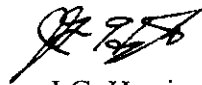
Dear Mr. Caton:

On February 5, 2002, James O. Robbins of Cox Communications, Inc. sent the attached written ex parte communication in the above-referenced proceeding to Chairman Powell and Commissioners Abernathy, Copps and Martin.

In accordance with the requirements of Section 1.1206 of the Commission's rules, the original and one copy of this letter and the attachment are being submitted to your office on this date and copies of this letter are being sent to the recipients of the written ex parte communication by the end of the business day following the date of the presentation.

Please inform me if any questions should arise in connection with this letter.

Sincerely,



J.G. Harrington

JGH/vl
Attachment

cc (w/o attach.): The Honorable Michael K. Powell
The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin

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OFFICE OF THE SECRETARY

February 5, 2002



VIA HAND DELIVERY

Hon. Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Chairman Powell:

At your invitation, I am writing to follow up on our meeting last July concerning the steps the Commission can take to facilitate fair competition between facilities-based CLECs and incumbent LECs. As you know, Cox has strong interests in local telephone competition and is one of the leading providers of facilities-based CLEC services to residential and business customers. We believe, as the Commission has concluded, that facilities-based competition creates the most benefits for telecommunications customers and that it is important to bring those benefits not just to large businesses but to individual consumers across the country.

I was particularly encouraged to read of your continuing interest in these issues in the article on your agenda for 2002 in *Telecommunications Reports* published in early January. As you described, new market entrants often have difficulty enforcing their rights – and even resolving disputes – “because they can get buried in the ambiguities and complexities, and they don’t have the resources and the time to get through these cases.” I applaud your recognition of this problem and your public commitment to address it. This is a perspective that Cox believes should be adopted throughout the Commission.

Cox is involved in two separate proceedings at the Commission, both involving its Virginia local telephone operations, which illustrate your point quite clearly. I hasten to emphasize that this letter does not concern the substance of either proceeding, but only the extent to which current procedures impose cost and delay on Cox and other CLECs and, consequently, hurt CLECs’ ability to compete in the local telephone marketplace. Both proceedings illustrate the importance of new Commission initiatives to cut through the red tape and to ensure quick, efficient action on issues that affect the development of the competitive local telephone business.

First, Cox has been seeking to enforce the reciprocal compensation terms of its interconnection agreement with Verizon South (formerly GTE) in Virginia. This proceeding began in June 2000, when Cox filed a petition for preemption. The petition was granted in September 2000, and Cox subsequently was instructed by the staff to file a formal complaint seeking enforcement of the agreement. After Cox filed the complaint, the staff bifurcated the

proceeding into a liability phase and a damages phase. Briefing on the liability phase was completed on July 20, 2001, nearly six months ago, and the proceeding remains pending. While its objective was laudable, until recently the staff was exerting efforts to encourage Cox and Verizon to settle this dispute, although the history of the basic controversy made clear that such endeavors were likely to be futile. If Cox succeeds in the liability phase, it will then have to file a separate request for damages, which will be subject to further discovery and briefing. At this point, it is likely that the total time between Cox's initial preemption filing and any decision on damages will be at least two years.¹ During this time, Verizon has refused to pay Cox any of the disputed amounts.

Cox also is one of the CLEC parties in an interconnection agreement arbitration with Verizon Virginia (formerly Bell Atlantic) that is pending before the Commission. Cox is grateful for the steps taken by the staff to reduce the burden of this proceeding on Cox, including scheduling the hearing to permit Cox's issues to be heard relatively close together and offering to mediate disputed issues in advance. In spite of these efforts, the Commission's procedures have required extravagant expenditure of Cox's resources. Cox has only eleven issues in this proceeding. Nevertheless, Cox was required to make no fewer than seventeen substantive filings totaling hundreds of pages over a span of nine months, to participate in several lengthy status conferences, to make an expert witness available for four days of hearings, and to make counsel and relevant Cox personnel available for six days of hearings. While I recognize that this was the first arbitration conducted by the Commission, the total time and expense to Cox is far exceeding any other arbitration Cox has experienced at the state level. Moreover, a year after the Commission began this proceeding, Cox still does not have a new interconnection agreement with Verizon in Virginia.

It is difficult to measure the total costs of these proceedings to Cox because they involve outside counsel, experts and extensive commitments of internal Cox resources. Still, there is no question that Cox has expended nearly a million dollars to enforce its rights in these two proceedings. Equally important, Cox has had to divert valuable internal resources to these proceedings rather than using those resources to develop its local telephone business in Virginia. The overall costs of these types of proceedings even may force Cox to forego enforcing its rights because the expense is too great given the risk involved.²

Cox recognizes that there are some costs that cannot be avoided, especially because incumbent LECs will continue to resist competition until it is fully established throughout the

¹ Cox is not the only company to experience this sort of delay in resolving contractual disputes. Starpower Communications filed a reciprocal compensation complaint with the Commission well before Cox's complaint and that complaint also remains pending.

² Sometimes, despite the expense, Cox has no real choice. For instance, Cox agreed to many of Verizon's proposals in its interconnection negotiations in hopes of avoiding arbitration, but was forced to arbitrate when Verizon would not modify proposals that could have raised Cox's costs of doing business to unsupportable levels or that created other significant business issues.

country. Still, it is important for the Commission to take every step possible to reduce unnecessary costs that CLECs must bear to enforce their rights. The single most important step that the Commission should take is to place a time limit on its resolution by a date certain of every matter presented to it. For example, the Commission could place a 60- or 90-day deadline on deciding each petition filed to enforce the terms of an interconnection agreement.

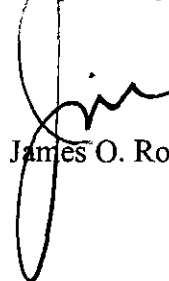
The Commission also has taken a step in the right direction by launching the current performance standards proceeding. Other steps are necessary as well. In particular, the Commission should consider how it can streamline and simplify the process for CLECs to enforce their rights. For instance, the Commission could create mechanisms for active staff involvement in informal complaints and disputes, and dedicate specific staff to resolving competitively sensitive issues.

It is particularly important for CLECs to obtain the certainty that comes with prompt Commission decisions, and the Commission should act as quickly as possible, especially when the length or nature of a dispute makes it clear that settlement without Commission intervention, while desirable, is unattainable. The Commission's focus in this regard should be on reducing the burdens on CLECs that seek to enforce their rights, so that they are not forced to choose between seeking relief from the Commission and operating their businesses at a competitive disadvantage.

Going forward, in each case in which the Commission assumes a state's responsibilities under the 1996 Act (such as in the arbitration discussed here), it should be responsible for enforcing its decision, including resolving disputes over interpretations of Commission-arbitrated interconnection agreements. Given the complexity of interconnection agreements, a large number of disputes may arise as the parties attempt to implement and operate under those contracts. Swift resolution of such disputes is undeniably important.

Mr. Chairman, I urge you to act swiftly to address these issues. The importance of your commitment to preventing CLECs from getting "buried in the ambiguities and complexities" cannot be overstated. You and your fellow Commissioners have the power and, indeed, the obligation under the Communications Act to do so, and should take every step within that power to achieve the goal of effective competition in the local exchange marketplace.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James O. Robbins". The signature is stylized with a large, looping initial "J" and a long, sweeping underline that extends to the right.

James O. Robbins

cc: Hon. Kathleen Q. Abernathy
Hon. Michael J. Copps
Hon. Kevin J. Martin